In the High Court of Judicature at Madras

Dated: 06.12.2004

Coram

The Honourable Mr.Justice A.K.RAJAN

Writ Petition Nos.18306 to 18308 of 2000

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1. P.Subbarayan
2. S.Shanmugham
3. P.Selvarajan
4. M.Venkatesan
5. K.Malakondiah
6. M.Mohan ... Petitioners in W.P.No.18306/2000

1. M.Subramaniam
2. V.Adimoolam
3. D.K.Selvanathan ... Petitioners in W.P.No.18307/2000

and

P.Vijayalakshmi ... Petitioner in W.P.No.18308/2000

v.

1. Union of India
   rep.by its Secretary
   Ministry of Surface Transport
   New Delhi

2. The Chairman
   Chennai Port Trust
   Chennai

3. The Secretary
   Chennai Port Trust
   Chennai

4. The Traffic Manager
   Chennai Port Trust
   Chennai

5. The Assistant Director
   National Commission for SC/ST
   V Floor, oknayak Bhavan
   New Delhi 110 003

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6. The Director
   National Commission for SC/ST
   Block No.5, II Floor
   Sastri Bhavan
   Chennai 600 006 Respondents in all the W.Ps.

Prayer: Petitions filed under Article 226 of the Constitution of India for the issue of Writ of Certiorarified Mandamus as stated therein.

For petitioners : Mr.S.Parthasarathy
For respondents : Mr.T.S.Sivagnanam ACGSC for RR1,5 and 6
Mr.R.Arumugham for RR2 and 4

O R D E R

The petitioners have filed the above writ petitions praying to issue Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the second respondent in SCT3/3208/2000S dated 02.05.2000 and quash the same and further direct the respondents 2 to 4 to promote the petitioners in W.P.Nos.18306 and 18307 and,in W.P.No.18308 of 2000, the petitioner's father V.Pushparaj, respectively, over and above their juniors with all monetary and other pensionary benefits with retrospective effect from 01.07.1993.

2. The above writ petitions have been filed against the order of promotion. The petitioners were employed as Tally Clerk in the year 1966-68 and subsequently they were promoted to Upper Division Tally Clerk in the year 1984; thereafter they were promoted as Assistant Superintendent (Tally) in the year 1989; that in the year 1993, they were reverted to Senior Assistants (Tally) on their giving option letter so that they can go for "outdoor" work. Presumably going outdoor work was for certain benefits conferred on such employees. Thereafter they gave a representation on 20.10.1993 seeking for promotion in "indoor" cadre as Superintendent (Tally); that was rejected and therefore, the petitioners have come forward with the present writ petitions.

3. In the counter filed by the respondents, it is stated that the petitioners were reverted only on their giving option to go for outdoor work even on a reverted post. On 05.05.1993

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and 06.05.1993, these petitioners have given letter to exercise their option and given a letter in form No.2 which reads as follows:

> "Pursuant to the Circular issued by the Traffic Manager referred to above, I hereby exercise my irrevocable option:
> A ... ...
> B ... ...
> C To transfer to do outdoor works by accepting downgrading to the category of Senior Assistant and re-fixation of pay as admissible under the Fundamental Rules"

In view of this option letter, the petitioners were reverted from the post of Senior Assistant and posted to the category of Outdoor works. Thereafter they wanted promotion course in the "indoor" category and the same was rejected by the Port Trust. On such averments, the respondents pray for the dismissal of the above writ petitions.

4. Heard both sides.

5. Learned counsel for the petitioners would submit that the grievance of the petitioners is that since these persons belong to Scheduled Caste, this exercise of option should not have been accepted by the Department and they should have consulted the National Commission for Scheduled Castes and Scheduled Tribes, constituted under Article 338 of the Constitution of India.

6. In support of this argument, learned counsel referred to the communication dated 30.03.2000 wherein it is stated that

> "(1) Out Door Postings. (2) Indoor postings: Some of the employees, that is, all these 14 affected SC employees had opted postings due to some incentives like uniforms and other benefits along with their consent of reversion from Assistant Superintendent to Senior Assistant posts. Here the Management has not consulted the National Commission for SC/ST as it affects large number of Scs./STs but it has consulted the trade union. It is obligatory to consult the National Commission for SC/ST which has not been done in the instant case".

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Relying upon the same, learned counsel for the petitioner would submit that this reversion of the petitioners without the consultation of the National Commissioner for SC/ST is bad in law and therefore they cannot be considered as reverted. This argument of the learned counsel for the petitioners is not acceptable since the petitioners have deliberately exercised their option to go to outdoor works in view of the fact that there were certain effects that is, they were enjoying the liberty.

7. Learned counsel appearing on behalf of the respondents relying upon the decision reported in 1995 (III) LLJ, 40 (S.D.DHANAWADE (Dr.) v. THE COMMISSIONER, KOLHAPUR MUNICIPAL CORPORATION & OTHERS) would submit that once option has been exercised, one cannot turn around and claim benefit under another in other words, one cannot approbate and reprobate. The above concept of approbation deprived is well established principles of law.

8. In view of the decision cited supra, since inasmuch these petitioners have deliberately opted, for reduction in rank and for the purpose of going outdoor works and got benefits thereunder, they cannot now turn around and claim benefits as if they were not so reverted. It is not correct to say that mere non-compliance of SC/ST Commission, would vitiate the orders. Further, the petitioners could have given their consent letter or option to do indoor works. But they never given such a letter of consent to work indoor. They wanted to go only for outdoor work.

9. In consideration of the facts and circumstances of the case pleaded, on perusing the materials available on record and upon hearing the learned counsel for the parties, this Court is of the considered view that the above writ petitions do not merit acceptance and the same are liable to be dismissed.

10. In the result, the writ petitions are dismissed. No costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To
1.The Secretary to Government
(Union of India)
Ministry of Surface Transport
New Delhi
2. The Chairman
Chennai Port Trust
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6. The Director
National Commission for SC/ST
Block No.5, II Floor
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Chennai 600 006

1 cc to Mr. T.S. Sivagnanam ACGSC, SR. 53495
1 cc to Mr. R. Arumugam, Advocate SR. 53414
1 cc to Mr. S. Parthasarathy, Advocate, SR. 53134

W.P.Nos.18306 to 18308 of 2000

SR (CO)
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